

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

JULY 19, 1951.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. JONAS, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H. R. 1672]

The Committee on the Judiciary, to whom was referred the bill (H. R. 1672) for the relief of Bank of America National Trust and Savings Association, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendment is as follows: Page 1, line 5, strike out "69,735" and insert in lieu thereof "20,403.65".

The purpose of the proposed legislation is to pay to Bank of America National Trust and Savings Association of San Francisco, Calif. the sum of \$20,403.65 on account of moneys loaned by such bank to San Jose Manufacturers, Inc., of San Jose, Calif.

STATEMENT OF FACTS

It is the contention of the claimant that it is entitled to be reimbursed in its capacity as assignee of the contract to which reference is made herein, for the unpaid amount of principal of a regulation V loan made by the bank to the San Jose Manufacturers, Inc. Regulation V loan was guaranteed by the War Department, acting through the Federal Reserve Bank of San Francisco, as fiscal agents, to the extent of 80 percent thereof. The money was used to enable the manufacturing company to carry out a contract with the War Department for the construction of 98 105-millimeter howitzer carriages which were manufactured, delivered, and accepted by the War Department. The transaction grows out of a written contract executed May 4, 1942. The contract price for each gun carriage was \$6,000.

The manufacturing company was formed by pooling many small machine shops located in and about the San Jose area. The purpose of

forming the corporation or pool was to effectuate a company equipped with sufficient machinery capable of assisting the Federal Government in turning out supplies necessary to carry on the defense program instituted to combat the dangers of enemy attack because of World War II. In 1939 and the years following up to the beginning of World War II, employment in the San Jose area was on the decline, and the local chamber of commerce was vitally interested in providing ways and means whereby acute unemployment could be obviated. In furtherance of the plan to stimulate business and stop unemployment, the San Jose Manufacturers, Inc., was formed. Additional facilities which the Government required were added to the over-all plan, including a forge plant considered necessary for the project.

Subsequent to the incorporation of the San Jose Manufacturers, Inc., this corporation, in response to solicitation by the Ordnance Department, submitted a bid under date of November 25, 1941, for the manufacture of 300 gun carriages at a cost of \$6,000 each. On January 24, 1942, the corporation received a letter contract, which was later superseded by a formal contract carrying the date hereinbefore mentioned. The contract called for the manufacture of 98 gun carriages at a stipulated price of \$6,000 each. The quantity to be manufactured was reduced by more than two-thirds of the number mentioned in the original bid of the manufacturing company.

It is contended by the claimants that upon receipt of the letter contract, the manufacturing company began construction of buildings and the purchase of necessary tools and materials. Immediately subsequent to such steps, difficulties arose and delays were brought about which the manufacturing company contends resulted in extra costs being added to the manufactured product. The claimants argue that the delays were brought about through no fault of the corporation, but solely through the fault of the authorities representing the United States Government.

The record is replete with incidents wherein the Government authorities demanded a change in the plans and specifications, and reinvestigations of the company's ability to perform, and disputes over the question of when and where material could be obtained that was necessary to produce the product contracted for. One of the main issues was that of obtaining special steel. The claimants contend that an order was placed for special steel on March 24, 1942, and a small shipment was received in June 1942, and not until October 1942 was the major portion of the steel available.

The manufacturing company also complains of the fact that there were unwarranted delays in obtaining execution of the orders calling for other material, and that much of the material ordered was never received. As a result of such delays, the manufacturing company was compelled to make other contacts, and the difficulties in finding suppliers of the special materials resulted in further delays. The record also discloses that there was dissatisfaction registered by the governmental agencies against the management of the manufacturing company.

On December 29, 1942, the Ordnance Department ordered a change in the management of the manufacturing company. During all this time the loan which the Bank of America National Trust and Savings Association underwrote was being gradually dissipated.

One of the questions in dispute centered around the fact that 98 gun carriages could not be manufactured as economically as they could be manufactured in volumes of 300.

In February 1943 a complete reorganization of the manufacturing company took place, including a new board of directors and new management. By reason of the many difficulties encountered by the manufacturing company due, in some measure, to the insistence of the Government agencies calling for changes in the original plans and specifications, and the inability of the company to obtain the necessary material, prices took a decided jump during that period, and further dispute arose about the added costs entering into the manufacturing of the product in question. Claimants contend that the authorities in charge, who were the agents of the Government, expressed their approval of adding any increase of costs to that of the original contract price. There is no clear written evidence in file to substantiate this contention, but by inference it may be assumed that the Government gave tacit consent to this request, because records disclose that the manufacturing company in writing made known to the Government agencies its position about asking an increase in cost price of the article to be manufactured. As a consequence of these many sporadic outbursts and misunderstandings between the Government and the manufacturing company, the bank found itself in a position where its original advance on the loan had been practically spent, and when it became apparent that the company required additional funds, the bank now argues that it had no choice but to yield to this request in order to protect its original investment. Consequently, the bank advanced additional sums of money from time to time. The bank's loan was secured and guaranteed by the Federal Government up to 80 percent.

During the period when the manufacturing company was engaged in manufacturing gun carriages and following the reorganization in the matter of management of the company, the Bank of America saw fit to place its own representative on the premises occupied by the manufacturing company as a liaison officer looking after the interests of the company, for which services the bank advanced \$5,668.65. While the record is not entirely clear, there is some testimony that the bank advanced about \$1,246,446.10. It would serve no useful purpose here to attempt to set forth all of the details that tend to enter into this transaction.

It is extremely difficult to determine now, after an examination of all the documents available, what specific and definite terms the parties finally agreed upon. Just to set forth when there was a definite meeting of the minds, and point out what all the parties understood to be the actual contract, is hard to ascertain at this time. The negotiations left many matters open to inferences and implications. Oral testimony was submitted in order to clarify some of the matters contended for by the respective parties relative to their interpretation and understanding of the written agreements entered into and executed by the governmental agencies and the manufacturing company. One can readily come to the conclusion after examining the testimony and all of the documents on file, that the transaction from its inception was subject to ambiguities and presupposed flexibility. If the evidence presented in support of a claim or that in opposition to it were screened through competent judicial proceedings, it is

reasonable to assume that this task would require 30 days or more. In this informal proceeding it is endeavored to set forth the high spots only. After completing the investigation, the Committee points out its conclusions as follows:

1. Claimants had reasonable grounds to believe that the Government intended to negotiate a contract with the manufacturer for 300 carriages.

2. That the Government used the manufacturing company in the capacity as a "guinea pig." This is evidenced by the fact that in an attempt to modify the contract, only an order for 98 carriages was finally placed with the company.

3. The bank was the victim of circumstances, and to some extent can be considered an innocent bystander.

4. The Government sent its own emissaries to encourage the local manufacturers to lend themselves to pooling their interests in furtherance of our national defense.

5. The documents submitted as representing the complete transaction are involved and in some respects ambiguous in their terms, and required clarification which was supplied by correspondence, none of which was very definite or specific in its recitals.

6. The bank, at its own expense, used extra precautions to protect its interests, by stationing at the manufacturing plant one of its vice presidents, who remained there for a period of about 2 years.

7. There is considerable merit to the contention of the manufacturers that because of the delays to which both parties contributed from time to time, the cost entering into the manufacture of the gun carriage was increased, and \$6,000 per carriage was not an adequate figure as and when the company was ready to turn out a finished product. Furthermore, there is evidence on file showing that another company, to wit the Pullman Co., had a contract to manufacture the same article and was being paid as high as \$10,000 per carriage.

8. After the delivery of the 98 carriages the manufacturing company became financially embarrassed, and was ordered to liquidate. The proceeds of the liquidation were ultimately distributed and the original investors were paid in full and were made entirely whole. From the proceeds of the sale of the gun carriages, plus the physical assets, enough money was realized to pay all of the original investors in full and to liquidate part of the bank loan. In the final analysis, it is conceded that the bank sustained a loss. This loss was minimized by the 80-percent guaranty which the Government originally underwrote.

The bank's claim presently is based on the amount of loss which it sustained because of the fact that its share received from the assets of the manufacturing company and the amount paid by the Government based on an 80-percent guaranty were not sufficient to pay the loan in full. The sum of \$69,735 represents the unpaid balance on the principal advanced by the bank. The Government contends that the bank entered into the transaction knowingly and with all available facts at its disposal; that the transaction was the usual and normal business transaction entered into by banks when making loans; that the bank took extraordinary precautions and placed its own representative on the premises in order to be fully informed as to all of the transactions and ramifications that entered into this

project; that the proceeding on behalf of the bank was voluntarily entered into; that the Government sustained a substantial loss in the transaction; that the bulk of the bank's losses have been assumed by the United States through an 80-percent guaranty underwriting; that in addition to the amount paid on the principal, the bank collected \$55,000 in interest; that the losses sustained by the bank were negligible as compared to the losses sustained by the Government; finally, that legislation called for in this bill would be discriminatory and would accord the claimant a preferential treatment not conferred by law on other persons and corporations in like circumstances. Then there is the usual defense that if this claim were allowed it might open up the door whereby a great number of claims similar in principle could be presented.

In answer to the defense interposed about "opening the door", it may not be remiss to call attention to Private Law 243, passed in the Seventy-ninth Congress for the benefit of Lubell Bros., Inc. This proceeding involved a claim for liquidated damages against the Government in the sum of \$104,511.12. Lubell Bros. were engaged in the manufacture of shirts. Prior to 1945 they entered into a contract with an agency of the United States Government to manufacture 1,108,000 shirts. The deal was processed through the War Production Board. The production management knew that the facilities of Lubell Bros. were inadequate to meet the delivery requirements called for in the contract. It was agreed that a major portion of the goods would be sublet by the prime contractor to subcontractors. It subsequently developed that the subcontractors approved by the Quartermaster's Department were unable to deliver the merchandise within the time specified in the contract. The delays were attributed to strikes, slow-downs, and other factors, including the difficulty in obtaining materials. There was no dispute about the loss sustained by the prime contractor. The Government set up the defense that the contract contained a clause whereby liquidated damages were to be assessed in case the contractor failed to produce the manufactured product within the time specified in the written instrument. Therefore the Government contended it had a right to withhold the sum claimed as liquidated damages.

The defenses pleaded to the claim are substantially of the same character as those pleaded in the claim before this committee. While there is some dissimilarity in the facts between the two respective claims, it would appear that in numerous respects the grounds upon which the claims are based are quite similar. In the Lubell Bros. claim the defenses interposed were similar to those interposed in the claim filed by the Bank of America.

It is desired also to point out that upon liquidation of the manufacturing company and after applying all of the funds received from the War Department and the sale of assets of the corporation to the indebtedness due from the corporation to the bank, there was a balance due to the bank of \$359,004.10. Of this balance, the Government assumed 80 percent of the losses sustained by the bank. According to a letter dated November 2, 1944, the bank contends that there is an unpaid balance due them of \$69,915. Later on this sum was modified by some credits, the details of which are not set forth here, which reduced the claim to \$69,735.

It is quite apparent from the review of the entire proceeding that the recourse by the bank to legal proceedings is open to question,

and it is doubtful if there is any legal basis for a claim against the Government of the United States. It then follows that the state of facts in the instant claim must support the contention that in equity and good conscience, the bank should be reimbursed.

An analysis of such an approach to the problem presently before us would be susceptible to three separate findings:

1. If the entire record were devoid of facts that would not appeal to equity and good conscience the claim could be rejected in its entirety.

2. If it is conceded that the defenses interposed by the Government are not feasible, with the exception that credit should be given to the Government for the amount of interest paid on the loan, then in the adjudication of the claim the sum of \$55,000 would have to be deducted from the \$69,735. This would leave a net balance of \$14,735. To that should be added the sum of \$5,668.65, because this figure represents a sum advanced by the bank to its employee during that period when all of his time was consumed in services rendered the manufacturing company. The sum total then due the bank would be \$20,403.65.

3. If both or either one of the afore-mentioned findings are not supported by the facts or are in conflict with the rules of equity and good conscience, then the only recourse would be to find in favor of the claimant for the amount called for in the bill now under consideration.

It is still further desired to point out that the position taken by the Government relative to crediting \$55,000 as earned interest against the amount claimed by the bank is not entirely in accord with or compatible with banking practices or banking business policy. Interest on money is paid only because the loaner has funds available for hire, and the debtor manifests a willingness to pay a fixed percentage in consideration of having the money made available for his use. This custom has been followed ever since a fixed currency has been recognized as a medium of exchange. Therefore, this committee can not subscribe to the contention interposed by the Government that there is merit in the proposal that interest earnings be charged against the amount which is in dispute. The remaining question in controversy is that the bank has no legal or equitable grounds upon which to base its claim.

The committee is disposed to recommend the approval of the claim in full; to wit, \$69,735. However, the amount of approximately \$55,000 is controversial and the amount of \$20,403.65 is the amount of actual losses, exclusive of interest. Therefore, the bill is amended accordingly and the committee recommends favorable consideration of the bill as so amended.

DEPARTMENT OF THE ARMY,
Washington, D. C., July 19, 1949.

HON. EMANUEL CELLER,

Chairman, Committee on the Judiciary,

House of Representatives.

DEAR MR. CELLER: The Department of the Army is opposed to the enactment of H. R. 4650, Eighty-first Congress, a bill for the relief of Bank of America National Trust and Savings Association.

This bill provides as follows: "That the Secretary of the Treasury be, and is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$69,735, to Bank of America National Trust

and Savings Association, of San Francisco, California, in full settlement of all claims against the United States on account of moneys loaned by it to San Jose Manufacturers, Incorporated, San Jose, California, in connection with the last-mentioned corporation's contract numbered W-83-Ord.-2564 [W-883-Ord.-2564] with the United States of America for the manufacture of ninety-eight gun carriages, howitzer 105-millimeter M2, which were actually manufactured and delivered to the War Department and accepted by it in accordance with said contract as modified by agreement between the contracting parties. Such sum represents the actual loss which claimant suffered after all of the assets of San Jose Manufacturers, Incorporated, which was wholly financed by claimant, were liquidated and applied on its obligations to the claimant on account of regulation V loans without which the said contract [contractor] would have been unable to undertake and perform the contract."

On January 24, 1942, the San Francisco Ordinance District placed a letter order, later formalized into contract No. W-883-Ord.-2564 (erroneously referred to in H. R. 4650 as W-83-Ord.-2564), with San Jose Manufacturers, Inc., of San Jose, California, for 98 105-millimeter howitzer carriages, exclusive of recoil mechanisms, but including spare parts, accessories, and sighting equipment (except major items) at a unit price not to exceed \$6,000 each. The letter order contained a provision for renegotiation of price downward after the completion of the first 50 carriages. This order was accepted on behalf of the contractor on January 27, 1942.

The unit price of \$6,000 was the maximum considered warranted by the Ordinance Department, was substantially higher than the average price being paid at the time for similar carriages, and as a matter of fact was higher than that paid at any time for like construction.

Delivery of all 98 carriages was required by the contract to be made before November 10, 1942. However, by February 3, 1943, none of the carriages had been delivered, but an amount equal to the entire contract price for the 98 carriages had been expended by the contractor. On February 23, 1943, a new board of directors and management took over the operation of San Jose Manufacturers, Inc. Production under the contract was finally completed and all deliveries made by January 13, 1944.

San Jose Manufacturers, Inc., which appears to have been promoted by the Chamber of Commerce of San Jose, Calif., was actually a pool of small machine shops organized by certain citizens of San Jose, according to the statement of representatives of the corporation, in an effort "to effect a consolidation of the machinery and equipment of the small machine shops to assist the Federal Government in the defense work program and to utilize the potential production capacity of the small machine shops and manufacturers in the national defense program."

The operations of San Jose Manufacturers, Inc., were financed entirely by the Bank of America National Trust and Savings Association, of San Francisco, Calif. All capital was furnished by the bank, and in turn the United States, through an 80 percent guaranteed Federal Reserve V-loan, assumed 80 percent of any losses which might be sustained by the bank. The corporation in its claim filed with the War Department under the First War Powers Act, approved December 18, 1941 (55 Stat. 839; 50 U. S. C. App. 611), stated that upon the liquidation of San Jose Manufacturers, Inc., and after applying all of the funds received from the War Department and from the sale of the assets of the corporation to the indebtedness due by the corporation to the bank there was a balance due to the bank of \$359,004.10. Of this balance, under the 80 percent guaranteed V-loan the United States assumed 80 percent of the losses sustained by the bank on its loan to San Jose Manufacturers, Inc., and, accordingly, the total loss of the bank, according to a letter received by the War Department from San Jose Manufacturers, Inc., dated November 2, 1944, was \$69,915. In this connection the Ordinance Department reports that on the loans of the Bank of America National Trust and Savings Association to San Jose Manufacturers, Inc., on account of this contract the bank received interest payments in excess of \$45,000. It appears that over \$11,000 additional interest payments were received by the bank during the same period from San Jose Manufacturers, Inc., in connection with certain other operations of the corporation not covered by contract No. W-883-Ord.-2564.

As indicated above, San Jose Manufacturers, Inc., was simply an association of small war plants banded together to perform Government contracts. Actually, none of the operations carried on by these various small war plants in connection with production under the carriage contract resulted in any loss to any of the

plants participating in the production. The only out-of-pocket loss was that sustained by the Bank of America National Trust and Savings Association with respect to the 20-percent portion of its financing of San Jose Manufacturers, Inc., not guaranteed by the Federal Reserve V loan.

The subject matter of contract No. W-883-Ord-2564 received the scrutiny of the War Department as the result of a request, and a later supplemental request submitted on behalf of San Jose Manufacturers, Inc., for an increase in the contract price from \$6,000 per carriage to \$7,767.20. These requests of the corporation on behalf of the Bank of America National Trust and Savings Association were submitted under title II of the First War Powers Act, *supra*, and Executive Order No. 9001 (December 27, 1941), wherein the War Department was granted extensive powers with respect to the modification of contracts and the increase of contract prices whenever it was deemed that such action would facilitate the prosecution of the war. It was the view of the War Department, however, after a survey of all available information, that there existed no basis on which the Department could properly use those broad powers to grant the relief requested by San Jose Manufacturers, Inc.

The original application for relief under the provisions of the First War Powers Act was resubmitted and supplemented under date of March 10, 1945, by a letter from Representative Jack Z. Anderson, of California, to the War Department. Further investigation was made by the Department, and it was considered that no new evidence was presented which warranted a different conclusion than that previously reached. This view was communicated to Representative Anderson by the following letter from the Under Secretary of War dated May 22, 1945:

"At your request a full investigation has been undertaken concerning the facts surrounding the administration by the Ordnance Department of contract No. W-883-Ord-2564 with San Jose Manufacturers, Inc. In connection with this investigation I have had careful consideration given not only to the supplementary request for contract adjustment, but also to the original application submitted to the Director, Purchases Division, Headquarters, Army Service Forces, on January 16, 1945, by Mr. Ralph W. Elsmann, chairman, San Jose Manufacturers, Inc., and his attorney, and to a later memorandum from counsel for the Bank of America.

"As the result of consideration of the facts, I am forced to conclude that the circumstances presented in this case are not such as to justify the granting of any adjustment to the company or to the Bank of America under the First War Powers Act and that favorable action could not be taken without doing violence to the principles long established under the act and Executive Order No. 9001 by the War Department and applicable to requests for relief arising under such act.

"The history of this case indicates that from the very outset the Ordnance Department, both in Washington and in the San Francisco district office, had serious doubts as to the ability of the San Jose Manufacturers, Inc., to perform this particular contract. It was with some misgiving that the War Department finally agreed to allow them to undertake the work.

"Almost from the outset the company had difficulty in organizing properly for the performance of the contract, and over a considerable period the Ordnance Department found it necessary to give it assistance of various types.

"When the concern had not been able to make delivery of any of the carriages contracted for even after the original completion date, the Ordnance Department felt that it would be impossible for it to fulfill its obligation. However, a change of management was effectuated, and thereafter the Bank of America advanced additional funds to finance the completion of the contract.

"It is the bank's representation that because the Ordnance Department knew of its furnishing these additional funds, it tacitly agreed to increase the price under the contract. So far as I can ascertain no responsible Ordnance Department officer or employee who had knowledge of the facts at any time stated or implied that such was the case. The willingness of the Ordnance Department to see the bank advance additional funds was based on a hope that with the additional funds and under the new management, San Jose Manufacturers would be able to complete the contract, deliver the gun carriages, and reduce the amount of the loss both to the Bank of America and to the War Department which, as you know, guaranteed the V-loan to the degree of 80 percent. The carriages were completed and the net loss to the bank was thereby very substantially decreased.

"The initial mistake in the entire transaction appears to have been a belief on the part of San Jose Manufacturers that it could manufacture these carriages for \$6,000, the maximum that Ordnance felt warranted in allocating to the project.

"The War Department was purchasing the same carriage from other manufacturers even then for less than \$6,000. It is doubtful if it would have been justified

in contracting originally at a higher price. There appears no basis on which it would now be proper for the War Department to increase the amount paid for these carriages over that originally contracted for. In reaching this conclusion consideration has been given to the fact that the entire operation was carried out in an attempt to implement the desires generally expressed by Congress that small plants should be used as much as possible in the war effort."

In the light of the foregoing facts it is the view of the Department of the Army that there is clearly no legal basis for a claim against the United States by the Bank of America National Trust and Savings Association. Furthermore, there is no basis in equity for the granting of the relief proposed by H. R. 4650. The bank voluntarily undertook to finance the operations of San Jose Manufacturers, Inc. The operations of the corporation resulted in substantial losses. The bulk of these losses, however, have been assumed by the United States, as heretofore shown, through an 80-percent guaranteed Federal Reserve V loan, whereby it assumed 80 percent of any losses which might be sustained by the Bank of America National Trust and Savings Association. As a result of the bank's financing of San Jose Manufacturers, Inc., it received payments in interest from said corporation in excess of \$55,000, and upon the entire operations of the corporation the bank only sustained an actual monetary loss in the neighborhood of \$15,000. Its losses with respect to the operations of San Jose Manufacturers, Inc., as compared with those of the United States, therefore, are negligible. The enactment of H. R. 4650 would constitute discriminatory legislation in that it would accord to this claimant a preferential treatment not conferred by general law on other persons and corporations in like circumstances. There are no facts or circumstances present in this case which would warrant singling out this claimant for preferential treatment.

The operations of many individuals and corporations during World War II in connection with the war effort have resulted in financial losses, but for the Government to attempt to compensate every one who suffered such wartime losses obviously would be impossible. To attempt to provide for such compensation through special legislation, such as this bill attempts to do, would commit the Government to an impractical policy. Furthermore, the enactment of the proposed legislation would result in the presentation of a great number of claims similar in principle for the payment of which no legal liability on the part of the United States exists, and the appropriation of public funds for the payment of such claims could not consistently be avoided without discrimination in favor of the present claimant. The Department of the Army, therefore, recommends that this bill be not favorably considered.

A similar bill, H. R. 3774, for the relief of the Bank of America National Trust and Savings Association, was introduced in the Eightieth Congress, except that it would have appropriated the sum of \$71,061 for the relief of the claimant. The Chairman, Committee on the Judiciary, House of Representatives, requested the Department of the Army to submit a report on said bill, and on July 20, 1948, the Secretary of the Army submitted a report on that bill similar to the report herein submitted on H. R. 4650, Eighty-first Congress.

The Bureau of the Budget has advised that the enactment of the proposed legislation would not be in accord with the program of the President.

Sincerely yours,

GORDON GRAY,
Secretary of the Army.

BRIEF IN SUPPORT OF H. R. 4650 FOR THE RELIEF OF BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

The bill H. R. 4650 is intended to reimburse the bank named therein in its capacity as assignee of the contract hereinafter described for the unpaid amount of principal of a regulation V loan made by it to San Jose Manufacturers, Inc., San Jose, Calif. As provided in regulation V the loan was guaranteed by the War Department of the United States acting through the Federal Reserve Bank of San Francisco, Calif., as fiscal agent of the United States, to the extent of 80 percent thereof. It was used by San Jose Manufacturers, Inc., to enable it to perform a contract with the War Department for the construction of 98. 105-millimeter howitzer carriages which were actually manufactured and delivered by it to the War Department and accepted by that Department.

The contract was numbered W-883-Ord-2564 and the date of execution of the contract was May 4, 1942. The contract price was \$6,000 for each howitzer carriage.

San Jose Manufacturers, Inc., was formed by pooling many small machine shops located in and about San Jose and the bay area, which at the time, 1939, were facing imminent shut-down because of lack of contracts and supply of essential materials. This was done at the instance of the Chamber of Commerce of San Jose, Calif., for the purpose of effecting a consolidation of the machinery and equipment of the small machine shops to assist the Federal Government in the defense work program and to utilize the potential productive capacity of the small machine shops and manufacturers in the national defense program. It was the thought of the industrial committee of the San Jose Chamber of Commerce that these shops could retain their employees and keep their equipment in use in the performance of subcontracts under prime Government contracts. As it was realized that a separate corporate entity with private capital would be required in order to obtain Government contracts, a group of men from San Jose and vicinity, on June 5, 1941, organized such corporation under the name San Jose Manufacturers, Inc., and applied to the Bank of America National Trust & Savings Association for financial assistance. The bank recognized the importance to the community and to the Federal Government of keeping these small shops and plants in operation and made the loan. The funds thus obtained constituted the entire capital of San Jose Manufacturers, Inc.

In order to meet the Government's requirements that the contractors should have approved plant facilities, a forge plant, considered as necessary for the project, was constructed in the city of Santa Clara.

The corporation in response to solicitation by the Ordnance Department for the manufacture of 105-millimeter gun carriages submitted a bid under date of November 25, 1941, for the manufacture of 300 such carriages at a cost of \$6,000 each. On January 24, 1942, the corporation received a letter contract, later substantiated by the formal contract hereinbefore mentioned, for the manufacture and assembly of 98 such gun carriages at a price of \$6,000 each. Although the quantity to be manufactured was reduced by more than two-thirds of the number bid on, no increase of the contract price was allowed. Upon receipt of the letter contract, purchase and construction of necessary tools, materials, etc. was started. Immediately, difficulties arose and a series of delays involving extra costs were encountered. The difficulties encountered and the delay caused thereby in the completion of the carriages, with the resulting additional costs, may be summarized as follows:

I. PRIORITY RATINGS

The first priority rating received by the corporation on January 24, 1942, for the purchase of materials, was an A-1-G priority. Orders for materials bearing this rating were in many instances deemed too low by the suppliers. The priority rating was not raised until April 9, 1942, when the company was raised to an A-1-A priority. This rating was still too low for the purchase of needed materials as substantiated by correspondence in the company's files. On July 22, 1942, a split priority rating was given the corporation as follows: 21 units, AA-2; 23 units, AA-3; 54 units, A-1-A.

Considerable confusion resulted among the suppliers over the split priority rating and further delays resulted. Finally, on July 22, 1943, the priority rating was raised to AA-1.

II. PLANS AND SPECIFICATION REVISIONS

Coincidental with the priority difficulties, numerous revisions of the plans and specifications for the manufacture of the carriage were made. The contract in the first instance was delayed 1 month because the plans upon which the corporation had predicated its bid, and upon which the contract price was based, were withdrawn and a new set of plans and specifications substituted. On April 11, 1942, the corporation asked for "freeze" orders on the plans, which could not be accepted by the San Francisco Ordnance Department.

III. MATERIAL DELAYS

Few of the materials ordered were received on the specified delivery dates.

An order for special steel was placed with the Great Lakes Steel Corp. on March 24, 1942, a small shipment of the items was received in June 1942 and the major portion thereof was received in October 1942, an interval of 6 months from the date of the original order. Shipment of the main portion of the materials ordered in March 1942 from Columbia Steel Co., were never received, notwithstanding strenuous effort on the part of San Francisco Ordnance Department in assisting

the corporation. The failure to receive this order necessitated the location of a new source of supply. Difficulties in finding suppliers of forgings and castings also resulted in delays until the materials were finally received.

IV. MANAGEMENT DIFFICULTIES

The group of men who had conceived the idea of assisting the defense program had a patriotic motive in mind and hoped by pooling the small machine shops to afford a means of keeping small shops operating during the war effort. Another group of businessmen spurred on by the same motives actually formed the corporation to obtain and execute a defense contract. This corporation, San Jose Manufacturers, Inc., encountered many difficulties with the rapidly changing situations which arose after the start of the pool over priority ratings, delays of material deliveries, and changes in plans and specifications. This corporation being the first pool of manufacturers, pioneered the way for subsequent contractors, and while bringing the corporation through its formative stages, quite naturally found difficulty in a rapid conversion and coordination of the 27 small machine shops into an operating unit. This difficulty involved dealings with 27 different managements, 27 different types of personnel, 27 different types of business and equipment, some located a distance of almost 100 miles apart.

On December 29, 1942, the San Francisco Ordnance Department, desperately in need of this type of gun carriage, determined that the management of the company should be changed so that the gun carriage could be completed without delay. At many conferences regarding the reorganization of the company, representatives of the corporation emphasized the fact that the physical plant was not then equipped to manufacture a gun carriage in accordance with the specifications in the original contract. It was pointed out also that a large amount of money borrowed from the Bank of America National Trust and Savings Association had already been expended and that as yet no gun carriage had been completed. Regardless of these facts, the Ordnance Department apparently was of the opinion that it was vitally necessary to maintain the physical and economic structure of all small manufacturers throughout the country and to keep the facilities and operating forces intact during the war emergency, and to this end the Government was allotting war contracts for this purpose. It was obvious at that time that the gun carriage could have been produced more economically and in greater volume in one of the large wholly integrated manufacturing plants of the country, but the program of keeping the 27 component plants in operation apparently was deemed of primary importance. On February 3, 1943, at the instance of the San Francisco Ordnance Department, a new board of directors and management, the personnel of which was suggested by San Francisco Ordnance, took office. The new officers immediately took over complete management of the company and reviewed all of its affairs, including its financial position. The management pointed out to San Francisco Ordnance Department the status of the company's finances, and from its reports on that subject it was obvious that it was a physical impossibility to complete the gun-carriage contract at the ceiling price set forth in the contract, namely, \$6,000 per carriage.

When the San Francisco Ordnance Department suggested the new management and requested the completion of the contract, and at the time of the actual reorganization of the company as suggested by the Ordnance Department, it knew that the gun carriage could not be completed at the ceiling price set out in the contract.

In view of the foregoing facts and circumstances, it can only be fairly and reasonably concluded that, as all parties knew that the gun carriages could only be built at a cost in excess of the price originally contemplated, all parties must, in reason, have expected the manufacturer to be compensated at least to the extent of actual cost. Nothing more is requested in the pending bill than the payment of that small sum which, added to previous payments made, will cover the bare cost of production of the gun carriages.

That additional amount consisted of money which was obtained from the bank. Had the bank not lent the money, the Ordnance Department would never have received the gun carriages. That money covered the additional cost of construction and should be repaid. In the report of the Secretary of the Army, dated July 20, 1948, it is argued that, because the bank was paid interest, it should not be repaid its principal loaned. This is unsound reasoning and, if followed out in any general course of dealing between the War Department and the financial institutions of the country, would compel the cutting off of the financial support of concerns dealing with the War Department. The Federal Reserve

banking system could not long exist if interest paid on loans were to be construed as repayment of the principal money loaned.

On June 5, 1943, under the new management, the first gun carriage was completed and shortly thereafter two more carriages were completed. The Government inspectors at the plant refused to approve the carriages, stating that they did not meet with the exact plans and specifications of the original contract. As a result, on July 1, 1943, representatives of the San Francisco Ordnance Department, Bank of America National Trust and Savings Association, Federal Reserve bank, and liaison officer, held a conference regarding the matter. At this meeting it was reiterated that the many small plants comprising San Jose Manufacturers, Inc., could not manufacture a gun carriage to exactly meet the plans and specifications and drawings of the original contract in every minute detail. After considerable discussion it was agreed by all concerned that the three gun carriages which had been manufactured would be disassembled, the parts reinspected by the Government inspectors, and a component carriage rebuilt from the parts of the three carriages disassembled. It was further agreed that a carriage which would be so assembled would be sent to the Aberdeen Proving Grounds as the representative carriage to be manufactured by the company; that if such a carriage were accepted by the Aberdeen Proving Grounds, the remaining 97 carriages provided by the contract would meet the specifications of the carriage so approved. The assembly of the new carriage was completed on July 23, 1943, and shipped to the Aberdeen Proving Grounds. On August 10, 1943, the company received advice that the Ordnance Department had accepted the carriage. As agreed upon, therefore, the company immediately took up the task of building 97 additional carriages having the same plans and specifications as the gun carriage approved in 1943. The company maintained its agreed schedule of deliveries, with the result that on January 13, 1944, the 98 gun carriages constructed exactly in accordance with the plans and specifications of the one approved at the Aberdeen Proving Grounds, were completed. On February 2, 1944, the company submitted a statement to the San Francisco Ordnance Department showing the company's audited cost of the gun carriages of approximately \$8,700, together with a fact-finding statement. The company at several meetings with the San Francisco Ordnance Department, submitted figures showing that the price of \$6,000 set forth in the original contract was wholly inadequate to cover the actual cost of the gun carriage. The actual cost per carriage in accordance with the audit of San Francisco Ordnance Department was stated to be \$7,767.20.

The company has been paid by San Francisco Ordnance Department the sum of \$575,122.84 for the gun carriages (item I of contract), and the sum of \$174,930.97 for special tools, dies, jigs, and fixtures (item II of contract).

All of the assets of San Jose Manufacturers, Inc., were liquidated and applied on that company's obligations to the Bank of America National Trust and Savings Association on the regulation V loans, after which there remained a deficit of \$359,004.10.

The Federal Reserve bank, as fiscal agent for the War Department under regulation V loans, paid to the Bank of America National Trust and Savings Association the amount of its obligation under the 80-percent guaranties. Also, certain other credits were made to the principal account of the loans leaving a principal balance of \$69,735.40 as the actual loss of principal suffered by the bank. The other credits consisted of proceeds of sale of office equipment and correction of an item of \$923.48 originally credited to interest which was subsequently reversed and credited to principal. Thus the amount of \$71,061 stated in the bill H. R. 4650 should be reduced to the net amount above stated of \$69,735.40.

Subsequent to the execution of the original agreement and to the executed oral modification thereof, certain written supplemental agreements have been entered into by and between the company and the War Department, contained in each of which was the following provisions:

"The execution of this supplemental agreement shall not preclude the assertion by the contractor in any legal action which may hereafter be instituted of any rights which may have resulted from acts and conduct of the parties to this contract and their agents, after the execution of the contract, including but not limited to a modification of the contract price by an executed oral amendment to the contract."

On October 31, 1944, after conference regarding the subject, the company also presented to the contracting officer in San Francisco an invoice in the amount of \$4,413.33 for services rendered by certain employees of the company for the account of the Ordnance Department. This claim grew out of the following facts:

During the construction of the gun carriages, the San Francisco Ordnance Department demanded a reinspection of parts which had theretofore been in-

spected by the company's inspectors and also had been inspected and bombed by the Ordnance Department in San Francisco and in other districts. The Ordnance Department found it impossible to obtain inspectors to perform this function and to keep up with the productive schedule of the company. It was therefore agreed between representatives of the San Francisco Ordnance Department and the company, that the company's inspectors, when their day's work for the company was finished, would work overtime to perform the inspection work, a function of the Ordnance Department. The amount of the invoice is the cost of this work in accordance with the Ordnance Department's own audit.

On November 25, 1944, San Francisco Ordnance Department returned the invoice to the company without payment, stating in its letter of transmittal that after a thorough investigation it was found that the services were rendered for the account of the contractor and not for the account of the Ordnance Department. This finding was made despite the fact that the parts had already been inspected by the company's inspectors, as well as other ordnance inspectors.

This effort by the Chamber of Commerce of San Jose, Calif., beginning in 1939 and joined in by the small machine shop owners and manufacturers of San Jose and the adjacent bay area and the Bank of America National Trust and Savings Association, which furnished all of the capital for the effort, furnished a model in proceedings leading up to the formation of the Smaller War Plants Corporation. (See S. 2250, hearings before a subcommittee of the Committee on Banking and Currency, U. S. Senate, 2d sess., 77th Cong., commencing at p. 130.)

In this case, as in the case of Lubell Bros., Inc., who were given relief by act of Congress approved November 9, 1945, Private Law No. 243, Seventy-ninth Congress, the War Department knew that the facilities of San Jose Manufacturers, Inc., were inadequate to meet the delivery requirements in the original contract. Notwithstanding this, the War Department participated in the reorganization of the contractor and encouraged it to proceed with the work after it was known that the cost for the gun carriages would substantially exceed the contract price. While doing this the War Department knew that all of the capital of the contractor was furnished by the bank.

The priorities given the contractor were too low as hereinbefore stated. The inherent difficulties of a group of machine shops working on different parts of the gun carriages in comparison with the efficiency of one large establishment such as doubtless had the contract for the other gun carriages which were awarded at the same time as the 98 which were given San Jose Manufacturers, Inc., should have caused the granting to it of the highest priorities from the very beginning. Had such priorities been granted, doubtless there would have been no loss in performing the contract, or at least the loss would have been greatly reduced.

We urge that it was reasonable for the contractor after representatives of the War Department had reviewed its problems and supervised the reorganization of its management, for the purpose of having it go on to complete what then must have appeared as a losing operation, to expect that the War Department would in due course absorb the loss. And it is not unreasonable that Congress should now be requested to make up this loss as it has done in many cases of such hardships.

In conclusion we submit that as the War Department received and accepted the entire output of this community enterprise, it is only fair, reasonable, and right that it should pay the remainder of the cost thereof. That is all the pending bill calls for.

Therefore, we respectfully urge that a favorable report be made upon the bill H. R. 1672 and that it be duly enacted into law.

Respectfully submitted.

COLLADAY, COLLADAY & WALLACE.

Counsel for Bank of America National Trust and Savings Association.

By E. F. COLLADAY.

AFFIDAVIT OF VERNON C. RICHARDS

STATE OF CALIFORNIA,
County of San Francisco, ss:

Vernon C. Richards, being first duly sworn, on oath states:

I am assistant vice president of the Bank of America National Trust and Savings Association, and have been such since 1937.

I am personally well acquainted with the origin, history, and facts relating to the formation of the San Jose Manufacturers, Inc., a corporation organized under

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the laws of California, and its experience in endeavoring to obtain a contract from the United States War Department for the manufacture of 300 105-millimeter howitzer carriages and its actual performance of contract No. W-883-Ord-2564, for 98 howitzer carriages, 105-millimeter, M2, dated May 4, 1942. In connection with the financing of said corporation by the Bank of America National Trust and Savings Association, hereinafter described, I was the officer assigned by the bank to keep in touch with the operations of the company and supervise the advancing of money to it and expenditures by it. I kept in close contact with the situation throughout.

The essential facts in relation thereto are as follows:

Early in the year 1941, pursuant to the President's proclamation requesting the formation of associations of small manufacturers to act as prime contractors, the Office of Production Management of the United States Government sent its representatives to California to enlist the interests of the banks and businessmen of that State in a project which had been advocated in Congress of preserving the small manufacturing organizations and using them as far as possible in the effort to prepare for national defense. Mr. Sidney Hillman, among others, appeared and made speeches advocating this general project.

He expressly urged that small machine shops and the like should form groups large enough and varied enough in their present activities to enable them to take prime contracts from the War Department for the manufacture of units of various sorts necessary to the national defense. Such groups were called pools.

Along with the efforts of Mr. Hillman and others of the Office of Production Management, there came into aggressive activity the Ordnance officers of the United States War Department Ordnance Office at San Francisco. Among these officers, with their then ranks, were Colonel Harman, Lieutenant Hedge, Captain Fratis, Captain Ball, and others.

Stimulated in the above manner, the Chamber of Commerce of San Jose, Calif., assembled a group of 27 or more shops and small factories, all situated within a radius of 50 or 60 miles of San Jose, consisting of pump makers, farm machinery repair shops, makers of small road machinery, small foundries, and so forth, and, after submitting the same to the said Ordnance officers and it having developed that it would not be possible to obtain a contract for such a pooled group, a corporation was formed under the name San Jose Manufacturers, Inc., the contract being obtained, to perform it by letting subcontracts to the various members of the pool.

This was accomplished in the summer of 1941, at which time the Federal Government accelerated the defense work program.

The Bank of America National Trust and Savings Association, in response to urgent requests by the Office of Production Management and in order to encourage industry and help it in the defense effort by bringing in the small industries, when approached by the San Jose group, or pool, undertook to finance them on the assumption that the War Department had satisfied itself of the ability to do the work that was needed. Therefore, a commitment was made by letter dated December 9, 1941, addressed to San Jose Manufacturers, Inc., the original of which and three copies were filed with the Ordnance District, San Francisco, one copy with OPM, and one with San Jose Manufacturers, Inc. Copy of that letter is attached hereto and marked "Exhibit I."

It is to be noted that in the first paragraph of this letter, the commitment is to be effective if and when San Jose Manufacturers, Inc., has been approved by the proper governmental agency and has in its possession a formal assignable and acceptable contract with the United States Government for the manufacture of 105-millimeter howitzer carriages M2, not to exceed 300 in number, and that the amount of the commitment shown in the second paragraph was to be "for working capital purposes, a sum or sums up to 30 percent of the full amount of the above-mentioned contract, but not to exceed a total of \$540,000."

The moneys were to be advanced by the bank as required, upon presentation of vouchers for materials purchased and certified payrolls for labor, and the loan was to be secured by an assignment of the full proceeds of the Government contract.

On August 1, 1941, a bid was submitted by San Jose Manufacturers, Inc., for the manufacture of 57-millimeter gun carriages, but it was not awarded a contract.

Through its early negotiations for a contract, the corporation learned that one of the Government's requirements for granting such a contract was that the contractor have approved plant facilities. This was necessary to comply with the Walsh-Healy Act, which required that the prime contractor do some necessary part of the manufacturing in its own plant. Accordingly, a forge plant was

constructed in the city of Santa Clara, and the bank advanced the money to pay for the same. This was the first of the many advancements made by the bank to the corporation. The machinery for this forge plant was selected by one of the Government inspectors of the Ordnance Department, a Mr. Sutton, who recommended to the corporation that it purchase the same, which was done.

At that time, the Ordnance Department in Washington was soliciting bids for the manufacture of 105-millimeter howitzer carriages and, in response thereto, the San Jose Manufacturers, Inc., submitted a bid on November 25, 1941, for the manufacture of 300 105-millimeter howitzer carriages at a cost of \$6,000 each. This bid was followed up actively by officers of the corporation in Washington, and on January 24, 1942, the corporation received a letter contract, later substantiated by a formal contract, being No. W-883-Ord-2564, for the manufacture and assembly of 98 105-millimeter howitzer carriages at a price of \$6,000 each. A photostat copy of the proposal to manufacture 300 howitzer carriages, 105-millimeter M2, is attached hereto and marked "Exhibit II."

It is of prime importance to note that the Ordnance Department reduced the number of the carriages under the contract from 300 to 98 without allowing a corresponding increase in the contract price. This contract for 98 units was regarded by both parties as an educational order to determine the capacity of the contractor to successfully manufacture and deliver the howitzer carriages, and it was understood between them that, if the 98 units were successfully manufactured, the corporation would be given a contract for an additional number.

On October 23, 1941, after discussing the immediate needs of the corporation with its officers, and with two officers of the Ordnance Department, Captain Fratis and Captain Ball, I was presented with a list of the required equipment, amounting to approximately \$58,000, and was informed by Captain Fratis that, if we could see fit to issue a "when and if" commitment for the money, it would facilitate the approval of the project by his Department. This meant approval by the Ordnance Department of San Jose Manufacturers, Inc., as an acceptable contractor to be awarded a construction contract. Pursuant to my report, my superior officers in the bank authorized this commitment and the same was made, the equipment was purchased and, after inspection of the same by San Francisco Ordnance officers, the corporation was approved to receive a contract.

At this time, the business was being conducted wholly with respect to the bid for 300 howitzer carriages, invitations for which had already been received from the War Department, and bid for which was actually submitted by the corporation under date of November 25, 1941. The month intervening—October 23 to November 25, 1941—between my favorable recommendation for the advance of \$58,000 and the submission of the bid, was consumed in getting the equipment and having it inspected and reported upon by the Ordnance officers.

Upon receipt of the letter contract, purchase and construction of necessary additional materials, tools, and so forth, was started. Immediate difficulties arose and a series of delays involving extra costs were encountered. The delay in the construction and completion of the howitzer carriages, with the resulting additional costs, may be summarized as follows:

I. PRIORITY RATINGS

The first priority rating received by the corporation on January 24, 1942, for the purchase of materials, was an A-1-G priority. Orders for materials bearing this rating were in many instances deemed too low by the suppliers. The priority rating was not raised until April 9, 1942, when the company was raised to an A-1-A priority. This rating was still too low for the purchase of needed materials as substantiated by correspondence in the company's files. On July 22, 1942, a split priority rating was given the corporation as follows: 21 units, AA-2; 23 units, AA-3; 54 units, A-1-A.

Considerable confusion resulted among the suppliers over the split priority rating and further delays resulted. Finally, on July 22, 1943, the priority rating was raised to AA-1.

II. PLANS AND SPECIFICATION REVISIONS

Coincidental with the priority difficulties, numerous revisions of the plans and specifications for the manufacture of the carriage were made. The contract in the first instance was delayed 1 month because the plans upon which the corporation had predicated its bid, and upon which the contract price was based, were withdrawn and a new set of plans and specifications substituted. On April 11, 1942,

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the corporation asked for "freeze" orders on the plans, which could not be accepted by the San Francisco Ordnance Department.

III. MATERIAL DELAYS

Few of the materials ordered were received on the specified delivery dates.

An order for special steel was placed with the Great Lakes Steel Corp. on March 24, 1942, a small shipment of the items was received in June 1942, and the major portion thereof was received in October 1942, an interval of 6 months from the date of the original order. Shipment of the main portion of the materials ordered in March 1942 from Columbia Steel Co., was never received, notwithstanding strenuous effort on the part of San Francisco Ordnance Department in assisting the corporation. The failure to receive this order necessitated the location of a new source of supply. Difficulties in finding suppliers of large forgings and castings also resulted in delays until the materials were finally received. Most of the steel required was of a very special type and difficult to obtain under any circumstances. An example of this was a bar of steel only 5 feet long, part of which was necessarily used in every one of the 98 howitzer carriages.

IV. MANAGEMENT DIFFICULTIES

The group of men who had conceived the idea of assisting the defense program had a patriotic motive in mind and hoped by pooling the small machine shops to afford a means of keeping small shops operating during the war effort. Another group of businessmen spurred on by the same motives actually formed the corporation to obtain and execute a defense contract. This new corporation encountered many difficulties with the rapidly changing situations which arose after the start of the pool over priority ratings, delays of material deliveries, and changes in plans and specifications. This corporation being the first pool of manufacturers, pioneered the way for subsequent contractors, and while bringing the corporation through its formative stages, quite naturally found difficulty in a rapid conversion and coordination of the 27 small machine shops into an operating unit. This difficulty involved dealings with 27 different managements, 27 different types of personnel, 27 different types of business and equipment, some located a distance of almost 100 miles apart.

On December 29, 1942, the San Francisco Ordnance Department, desperately in need of this type of howitzer carriage, determined that the management of the corporation should be changed so that the howitzer carriages could be completed without delay. At many conferences regarding the reorganization of the corporation, representatives of the corporation emphasized the fact that the physical plant was not then equipped to manufacture a howitzer carriage in accordance with the specifications in the original contract. It was pointed out also that a large amount of money borrowed from the Bank of America National Trust and Savings Association had already been expended and that as yet no howitzer carriage had been completed. Regardless of these facts, the Ordnance Department apparently was of the opinion that it was vitally necessary to maintain the physical and economic structure of all small manufacturers throughout the country and to keep the facilities and operating force intact during the war emergency, and to this end the Government was allotting war contracts for this purpose. It was obvious at that time that the howitzer carriage could have been produced more economically and in greater volume in one of the large wholly integrated manufacturing plants of the country, but the program of keeping the 27 component plants in operation apparently was deemed of primary importance. On February 3, 1943, at the instance of the San Francisco Ordnance Department, a new board of directors and management, the personnel of which was suggested by San Francisco Ordnance, took office. The new officers immediately took over complete management of the corporation and reviewed all of its affairs, including its financial position. The management pointed out to San Francisco Ordnance Department the status of the corporation's finances, and from its reports on that subject it was obvious that it was a physical impossibility to complete the howitzer carriage contract at the ceiling price set forth in the contract, namely, \$6,000 per carriage. When the San Francisco Ordnance Department so suggested the new management and requested the completion of the contract, and during the course of the reorganization of the corporation, it knew that the howitzer carriage could not be completed at the ceiling price set out in the contract.

When the corporation had been reorganized to the expressed satisfaction of the officers of the Ordnance Department, the Bank of America National Trust and Savings Association made commitment to advance (at that time and thereafter

during the further operations of the corporation) \$445,377, which was all used in completing the 98 howitzer carriages. Prior to the reorganization and prior to the further commitment for the \$445,377, Col. Dean Witter, of the San Francisco Ordnance District, called for an analysis of costs to clarify the situation as to the completion of the carriages. In the final discussion regarding the reorganization, and because all present were aware of the excessive cost of production, it was understood that there would be an upward revision of the contract price per carriage. The following representatives of the Ordnance Department were present at the meeting, at which the results of the survey were discussed and this understanding was arrived at: Colonel Harman, chief of the district, Lt. Col. Dean Witter, and Major Green. This conference occurred on February 3, 1943.

On June 5, 1943, under the new management, the first howitzer carriage was completed and shortly thereafter two more carriages were completed. One of these carriages was shipped to the Aberdeen Proving Ground as the representative carriage to be manufactured by the corporation, with the understanding had between the corporation and the inspectors of the Ordnance Department, that, if this carriage was accepted by the Aberdeen Proving Ground, the remaining 97 carriages provided for in the contract would be acceptable. On August 10, 1943, the corporation received advice that the carriage had passed the test at the Aberdeen Proving Ground, and had been accepted by the Ordnance Department. Therefore, the corporation immediately took up the task of building 97 additional carriages having the same plans and specifications as the howitzer carriage so approved. The 98 carriages, constructed exactly in accordance with the plans and specifications of the one tested and approved at the Aberdeen Proving Ground, were delivered to and accepted by the War Department. On February 2, 1944, the corporation submitted a statement to the San Francisco Ordnance Department showing the corporation's audited cost of the gun carriage of approximately \$8,700, together with a fact-finding statement. The corporation, at several meetings with the San Francisco Ordnance Department, submitted figures showing that the price of \$6,000 set forth in the original contract was wholly inadequate to cover the actual cost of the howitzer carriages. During the course of the discussions had by me with the officers of the Ordnance Department as to the cost per unit of the howitzer carriage, I learned from reliable information that the Pullman Standard Car Co., which had a contract for a large number, namely 500 of 105-millimeter howitzer carriages, found the cost of building its first hundred of the carriages to be over \$10,000 per carriage.

The total amount advanced by the Bank of America National Trust and Savings Association to San Jose Manufacturers, Inc., was \$1,246,446.10. Of this amount, \$781,682.61 was advanced before the reorganization and \$464,763.49 after the reorganization.

The corporation has been paid by San Francisco Ordnance Department the sum of \$575,122.84 for the gun carriages (item I of contract), and the sum of \$174,930.97 for special tools, dies, jigs, and fixtures (item II of the contract).

Other equipment, tools, materials, and supplies have been sold. All of the funds received from the Ordnance Department and on the liquidation of the corporation were duly applied on the corporation's loans, leaving as a deficit the sum of \$348,676.98 due to the Bank of America National Trust and Savings Association under its regulation V loan.

Subsequent to the execution of the original agreement and to the executed oral modification thereof, certain written supplemental agreements have been entered into by and between the corporation and the War Department, contained in each of which was the following provision:

"The execution of this supplemental agreement shall not preclude the assertion by the contractor in any legal action which may hereafter be instituted of any rights which may have resulted from acts and conduct of the parties to this contract and their agents, after the execution of the contract, including but not limited to a modification of the contract price by an executed oral amendment to the contract."

In view of the fact that the loan was guaranteed by an 80 percent regulation V guaranty, 80 percent of the loss indicated by the deficit above shown, has been borne by the Federal Reserve Bank as fiscal agent for the War Department, and 20 percent thereof by the Bank of America National Trust and Savings Association.

CONCLUSION

The actual net loss to the Bank of America National Trust and Savings Association was \$69,735, being the amount proposed to be authorized in the bill, H. R. 4650, to be paid to the bank.

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I have read the letter of the Secretary of the Army, dated July 19, 1949, addressed to Hon. Emanuel Celler, chairman, Committee on the Judiciary, House of Representatives, being a report on said bill H. R. 4650. On page 5 of that letter, reference is made to interest paid by San Jose Manufacturers, Inc., to the bank as being in excess of \$55,000, and the statement is made that, upon the entire operations of the corporation, the bank only sustained an actual monetary loss in the neighborhood of \$15,000. This is an erroneous statement if taken as a final result, as it does not take into account bank-operating costs nor many other factors, such as my own salary during the many months I was engaged in supervising the San Jose Manufacturers, Inc., business, and especially as to finance, and also the salaries of other officials and employees of the bank, and incidental expenses. Furthermore, interest paid on loans is never to be considered as repayment of the capital amount of the loan unless the rate is usurious. In the case of the loan here made by the bank to the corporation, the rate originally was 5 percent and later dropped to 2½ percent.

VERNON C. RICHARDS.

Subscribed and sworn to before me this 30th day of August A. D. 1949.

[SEAL]

JOHN F. BURNS,
Notary Public.

My commission expires April 12, 1953.

EXHIBIT I

DECEMBER 9, 1941.

SAN JOSE MANUFACTURERS, INC.,

San Jose, Calif.

GENTLEMEN: This is to inform you that, if and when, San Jose Manufacturers, Inc., has been approved by the proper governmental agency and has in its possession a formal, assignable, and acceptable contract with the United States Government for the manufacture of 105-millimeter howitzer carriages M-2, not to exceed 300 in number, the Bank of America will grant to the corporation the following financial accommodations:

(a) For working capital purposes, a sum or sums up to 30 percent of the full amount of the above-mentioned contract but not to exceed a total of \$540,000; moneys to be advanced by the bank, and required, upon presentation of vouchers for materials purchased and certified payrolls for labor. This loan is to be secured by an assignment of the full proceeds of the Government contract.

(b) An amount not to exceed \$175,000 for the purchase of tools, dies, and fixtures, with the understanding that the contract will provide that the tools, dies, and fixtures, will be purchased for and in the name of the United States Government, and that the bank will be reimbursed immediately following the installation of such equipment and subject to the further condition that written guaranties be furnished by the suppliers or subcontractors assuring delivery and proper installation of all such equipment within a specified time limit.

(c) Seventy thousand dollars for the purchase and construction of machines and equipment needed in the proposed forging and assembly plants of the corporation. This loan shall be secured by a chattel mortgage upon said machines and equipment and shall be guaranteed by the individual subcontracting shareholders of the corporation, each of said shareholders to be liable and responsible for his ratable share of the loan, based upon the proportion which the number of shares of stock issued to him bears to the total number of shares issued to all other subcontracting shareholders; or shall be otherwise guaranteed to the satisfaction of the bank.

It is further understood that the corporation shall keep and maintain proper accounting records which shall be open to review and study at all times by officers or agents of the bank.

Loans (a) and (c) hereinabove referred to are to be repaid from the proceeds of the Government contract from payments made to the bank thereunder, under the above-referred-to assignment, said payments to be made over a period expiring not later than 270 days from the commencement of production. The proceeds of such payments will be allocated to said loans in the following proportion: 8 percent of that portion thereof representing actual costs of production to be applied toward the payment of loan (c) and the balance toward the payment of loan (a), which percentages are intended to correspond to the cost and profit factors included in each payment.

If a contract acceptable to the bank has not been entered into between the San Jose Manufacturers, Inc., and the United States Government on or before January 10, 1942, this commitment will expire.

It is understood, also, that the granting of these financial accommodations are contingent upon the execution and delivery of assignment or assignments of the Government contract or contracts, of a note or notes, mortgage or mortgages, loan agreement and any other documents or agreements required by the bank, satisfactory to the bank in form and substance.

Yours very truly,

E. A. MATTISON,
Assistant to the President.

EXHIBIT II

NOVEMBER 25, 1941.

Proposal of San Jose Manufacturers, Inc.

To the United States of America, War Department, San Francisco Division of Ordnance:

To manufacture f. o. b. plant of San Jose Manufacturers, Inc., San José, Calif., 300 howitzer carriages, 105-millimeter, M-2, according to the plans and specifications, as set forth in the drawings as above named and numbered.

Price: \$1,800,000 for 300 units complete with extra parts as specified, subject however, to an adjustment of said price upon completion of 100 units to the actual cost of manufacture, plus overhead and a reasonable profit thereon; said price as adjusted shall not exceed the unit price of \$6,000 per unit.

Delivery: Production to start not later than 6 months after award of contract, which 6-month period may be necessary for the manufacture of tools, jigs, fixtures, dies, and patterns. Delivery of completed units will be made in not less than the following quantities:

90 days after start of production, 100 units.

180 days after start of production, 100 units.

270 days after start of production, 100 units.

San Jose Manufacturers, Inc., proposes to increase production within the first 90 days of manufacture from 100 units each 90 days to 150 units for the same period of time, provided certain items may be secured from out-of-State manufacturers, now supplying the Rock Island Arsenal with said items. These firms have signified their willingness to furnish the San Jose Manufacturers, Inc., with said items.

San Jose Manufacturers, Inc., further proposes that the production of 150 units each 90 days be regarded as a minimum. It is fully anticipated that after the initial 90-day period, production will be at least 50 units per month. Every effort will be made to obtain all items from Pacific coast sources with the exception of commercial items.

All parts to be manufactured as above set forth are those listed on the following numbered specification drawings which also list all extra parts:

B-168112	B-168112 L	B-169769
B-168112 A	B-168112 M	B-169770
B-168112 AA	B-168112 N	B-69986
B-168112 AB	B-168112 P	B-192522
B-168112 AC	B-168112 Q	B-192523
B-168112 AD	B-168112 R	B-192547
B-168112 B	B-168112 S	B-192548
B-168112 C	B-168112 T	B-192549
B-168112 D	B-168112 U	B-192562
B-168112 E	B-168112 W	B-192602
B-168112 F	B-168112 X	B-192603
B-168112 G	B-168112 Z	B-192604
B-168112 H	B-168197	B-192828
B-168112 K	B-168197 A	

San Jose Manufacturers, Inc., further proposes to manufacture all tools, jigs, fixtures, blanking dies, forming dies, forging dies, and patterns required for the manufacture of the howitzer carriage, 105-millimeter, M-2. Said tools, jigs, fixtures, blanking dies, forming dies, forging dies and patterns are to be manufactured according to drawings furnished by Rock Island Arsenal. The price of said manufacture is to be the actual cost plus a reasonable overhead, but not to exceed the amount of \$175,000. Estimated price of manufacture is \$159,600.

As further evidence in regard to the prices and deliveries quoted above, there are enclosed with this proposal the following documents:

Exhibit A: Personnel breakdown for the production and administration divisions of the corporation, personal history of the production personnel, and the breakdown of the subcontracting plants as to type of machinery available.

Exhibit B: A list and estimated cost of the capital equipment required by the San Jose Manufacturers, Inc.

Exhibit C: A labor breakdown for the production of 100 units including spare parts.

Exhibit D: A distribution of the machining list by the various sub-contracting plants.

Exhibit E: An estimated cost for 100 units including spare parts, attached thereto a list of the overhead expenditures required for this production.

Exhibit F: An estimated cost for 150 units including spare parts, attached thereto a list of the overhead expenditures required for this production.

Exhibit G: A copy of the agreement entered into by the San Jose Manufacturers, Inc., and the participating subcontractors.

Exhibit H: A notarized list of the manufacturers who have signed and agreed to the agreement shown as exhibit G with the individual contractors listed as to total price agreed thereto.

Exhibit I: A letter from the Bank of America stating their position in financing the manufacture of the carriages covered by this proposal.

Exhibit J: Proposed financial statement.

[SEAL]

SAN JOSE MANUFACTURERS, INC.,
HARRISON B. JUDD, *President*.

